

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: April 19, 2006

Division: Engineering

Bulk Item: Yes X No

Department: Engineering Services

Staff Contact Person: David S. Koppel, PE
County Engineer

AGENDA ITEM WORDING: Approval to execute Agreement No. OT060110 with the South Florida Water Management District (SFWMD) for financial assistance with stormwater improvement construction projects, subject to review and approval by the County Attorney.

ITEM BACKGROUND: The SFWMD has agreed to contribute \$200K in cost share funding for stormwater projects as described in Agreement #OT060110.

PREVIOUS RELEVANT BOCC ACTION: On May 18, 2005, the BOCC approved a similar one year agreement for \$150K.

CONTRACT/AGREEMENT CHANGES: New agreement.

STAFF RECOMMENDATIONS: Approval as stated above.

TOTAL COST: \$400K

BUDGETED: Yes No X

COST TO COUNTY: \$200K

SOURCE OF FUNDS: Gas Tax Revenue

REVENUE PRODUCING: Yes No X **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty OMB/Purchasing Risk Management n/a

DIVISION DIRECTOR APPROVAL:


David S. Koppel, PE, County Engineer

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #



ORIGINAL

SOUTH FLORIDA WATER MANAGEMENT DISTRICT LOCAL GOVERNMENTAL AGREEMENT

AGREEMENT NO. OT060110

BETWEEN THE

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

MONROE COUNTY

THIS AGREEMENT is entered into as of the _____ by and between the South Florida Water Management District (**DISTRICT**) and Monroe County (**COUNTY**).

WHEREAS, the **DISTRICT** is a public corporation of the State of Florida, created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes, to include entering into contracts with public agencies, private corporations or other persons; and

WHEREAS, the **DISTRICT** desires to provide financial assistance to the **COUNTY** for stormwater improvement construction projects; and

WHEREAS, the **COUNTY** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **AGREEMENT**; and

WHEREAS, the Governing Board of the **DISTRICT** at its February 08, 2006 meeting, approved entering into this **AGREEMENT** with the **COUNTY**;

NOW, THEREFORE, in consideration of the covenants and representations set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. The **DISTRICT** agrees to contribute funds and the **COUNTY** agrees to perform the work set forth in Exhibit "A" attached hereto and made a part hereof, subject to availability of funds and in accordance with their respective authorities to construct and repair stormwater drainage structures on 17 streets in Big Pine Key.
2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue for a period of ten (10) months.
3. The total **DISTRICT** contribution shall not exceed the amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00). The **DISTRICT** will provide the full amount based on the Payment and Deliverable Schedule set forth in Exhibit "B", which is attached hereto and made a part of this **AGREEMENT**. The **DISTRICT's** contribution is subject to adequate documentation to support actual expenditures within the not-to-exceed **AGREEMENT** funding limitation of \$200,000.00. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of this amount.

4. The **COUNTY** shall submit quarterly financial reports to the **DISTRICT** providing a detailed accounting of all expenditures incurred hereunder throughout the term of this **AGREEMENT**. The **COUNTY** shall report and document the amount of funds expended per month during the quarterly reporting period and the **AGREEMENT** expenditures to date within the maximum not-to-exceed **AGREEMENT** funding limitation.
5. The **COUNTY** shall cost share in the total amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00) in conformity with the laws and regulations governing the **COUNTY**.
6. All work to be performed under this **AGREEMENT** is set forth in Exhibit "A", Statement of Work, which is attached hereto and made a part of this **AGREEMENT**. The **COUNTY** shall submit quarterly progress reports detailing the status of work to date for each task. The work specified in Exhibit "A" shall be under the direction of the **COUNTY** but shall be open to periodic review and inspection by either party. No work set forth in Exhibit "A" shall be performed beyond the expiration date of the Agreement, unless authorized through execution of an amendment to cover succeeding periods.
7. The **COUNTY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The **COUNTY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager. The **COUNTY** agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the **COUNTY** that the **DISTRICT** shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).
8. Both the **DISTRICT** and the **COUNTY** shall have joint ownership rights to all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the other party, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "A", Statement of Work. Both parties' rights to deliverables received under this **AGREEMENT** shall include the unrestricted and perpetual right to use, reproduce, modify and distribute such deliverables at no additional cost to the other party. Notwithstanding the foregoing, ownership of all equipment and hardware purchased by the **COUNTY** under this **AGREEMENT** shall be deemed to be the property of the **COUNTY** upon completion of this **AGREEMENT**. The **COUNTY** shall retain all ownership to tangible property.
9. The **COUNTY**, to the extent permitted by law, assumes any and all risks of personal injury, bodily injury and property damage attributable to negligent acts or omissions of the **COUNTY** and the officers, employees, servants and agents thereof. The **COUNTY** represents that it is self-funded for Worker's Compensation and liability insurance, covering bodily injury, personal injury and property damage, with such protection being applicable to the **COUNTY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that the **COUNTY** subcontracts any part or all of the work hereunder to any third party, the **COUNTY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **COUNTY**. Any contract awarded by the **COUNTY** shall include a provision whereby the **COUNTY's** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **COUNTY's** subcontract.
10. The **COUNTY** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.
11. The parties to this **AGREEMENT** are independent entities and are not employees or agents of the other parties. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT**, the **COUNTY**, their employees, agents, subcontractors or assigns, during or after the term of this **AGREEMENT**. The parties to this **AGREEMENT** shall not assign, delegate or otherwise transfer their rights and obligations as set forth in this **AGREEMENT** without the prior written consent of the other parties. Any attempted assignment in violation of this provision shall be void.

12. The parties to this **AGREEMENT** assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this **AGREEMENT**.
13. The **COUNTY**, its employees, subcontractors or assigns, shall comply with all applicable federal, state and local laws and regulations relating to the performance of this **AGREEMENT**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **COUNTY**, upon request, as to any such laws of which it has present knowledge.
14. Either party may terminate this **AGREEMENT** at any time for convenience upon thirty (30) calendar days prior written notice to the other party. In the event of termination, all funds not expended by the **COUNTY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.
15. The **COUNTY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **COUNTY** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **COUNTY**.
16. The **COUNTY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **COUNTY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:
 - A. Maintenance of Records: The **COUNTY** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **AGREEMENT** including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from the expiration date of this **AGREEMENT**.
 - B. Examination of Records: The **DISTRICT** or designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **AGREEMENT**. Such examination may be made only within five (5) years from the expiration date of this **AGREEMENT**.
 - C. Extended Availability of Records for Legal Disputes: In the event that the **DISTRICT** should become involved in a legal dispute with a third party arising from performance under this **AGREEMENT**, the **COUNTY** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute. All such records shall be made readily available to the **DISTRICT**.
17. Whenever the **DISTRICT**'s contribution includes state or federal appropriated funds, the **COUNTY** shall, in addition to the inspection and audit rights set forth in paragraph #16 above, maintain records and similarly require each subcontractor to maintain and allow access to such records in compliance with the requirements of the Florida State Single Audit Act and the Federal Single Audit Act, as follows:
 - A. Maintenance of Records: The **DISTRICT** shall provide the necessary information to the **COUNTY** as set forth in Exhibit "C". The **COUNTY** shall maintain all financial/non-financial records through:
 - (1) Identification of the state or federal awarding agency, as applicable
 - (2) Project identification information included in the Catalog of State Financial Assistance (CSFA) or the Catalog of Federal Financial Assistance (CFDA), as applicable
 - (3) Audit and accountability requirements for state projects as stated in the Single Audit Act and applicable rules of the Executive Office of Governor, rules of the Chief Financial Officer and rules of the Auditor General and the State Projects Compliance Supplement
 - (4) Audit/accountability requirements for federal projects as imposed by federal laws and regulations
 - (5) Submission of the applicable single audit report to the **DISTRICT**, as completed per fiscal year
 - B. Examination of Records: The **DISTRICT** or designated agent, the state awarding agency, the state's Chief Financial Officer and the state's Auditor General and/or federal awarding agency shall have the right to examine the **COUNTY**'s financial and non-financial records to the extent necessary to monitor the **COUNTY**'s use of state or federal financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations which may include onsite visits and limited scope audits.

18. All notices or other communication regarding this **AGREEMENT** shall be in writing and forwarded to the attention of the following individuals:

South Florida Water Management District

Attn: Cecelia Weaver, Project Manager
Telephone No. (305) 853-3219

Attn: Rupert Giroux, Contract Specialist
Telephone No. (561) 682-2532

Address:
P.O. Box 24680
3301 Gun Club Road
West Palm Beach, FL 33416-4680

Monroe County

Attn: David S. Koppel, P.E., County Engineer
Telephone No. (305) 292-4426

Address:
1100 Simonton Street
Gato Building, Suite 2-216
Key West, FL 33040

19. **COUNTY** recognizes that any representations, statements or negotiations made by **DISTRICT** staff do not suffice to legally bind **DISTRICT** in a contractual relationship unless they have been reduced to writing and signed by an authorized **DISTRICT** representative. This **AGREEMENT** shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.
20. This **AGREEMENT** may be amended, extended or renewed only with the written approval of the parties. The **DISTRICT** shall be responsible for initiating any amendments to this **AGREEMENT**, if required.
21. This **AGREEMENT**, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this **AGREEMENT** will bind any of the parties to perform beyond their respective authority, nor does this **AGREEMENT** alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.
22. Should any term or provision of this **AGREEMENT** be held, to any extent, invalid or unenforceable, as against any person, **COUNTY** or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **AGREEMENT**, to the extent that the **AGREEMENT** shall remain operable, enforceable and in full force and effect to the extent permitted by law.
23. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this **AGREEMENT** by the parties shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this **AGREEMENT**. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this **AGREEMENT** specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
24. Any dispute arising under this **AGREEMENT** which cannot be readily resolved shall be submitted jointly to the signatories of this **AGREEMENT** with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.
25. This **AGREEMENT** states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this **AGREEMENT**.
26. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:
- (a) Terms and Conditions outlined in preceding paragraphs 1 – 24
 - (b) Exhibit "A" Statement of Work
 - (c) all other exhibits, attachments and documents
specifically incorporated herein by reference

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this **AGREEMENT** on the date first written above.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By: _____

Carrie Hill, Interim Director of Procurement

SFWMD PROCUREMENT APPROVED

By: 

Date: 2/22/06 sm

MONROE COUNTY

By: _____

Title: _____

EXHIBIT "A"

STATEMENT OF WORK

Monroe County Stormwater Improvements Project

1.0 INTRODUCTION

Monroe County completed its Stormwater Management Master Plan (SMMP) in the spring of 2001 and the Board of County Commissioners adopted the SMMP in June of that year. The SMMP provides specific recommendations for a number of projects and other general recommendations as it relates to County road rights-of-way. As a result, the Board of County Commissioners passed Resolution No. 501-2001, requiring that all future work on County rights-of-way include stormwater improvements where practical and feasible. In addition, Monroe County has adopted a stormwater ordinance for the purpose of regulating water quality and water quantity for new development.

This project involves construction of the stormwater portion of road improvements on 17 streets in Big Pine Key Project Area 10. Site work will include construction of new stormwater drainage structures and the repair of existing structures with the goal of eliminating a direct stormwater discharge to the Outstanding Florida Waters of the FL Keys National Marine Sanctuary. The total cost to the District is \$200,000 of an estimated overall project cost of \$400,000.

2.0 SCOPE OF WORK

The County will construct stormwater improvements on seventeen streets in the Big Pine Key Project Area 10. The site work will include construction of new stormwater drainage structures and the repair of existing structures. The District will conduct site inspections to verify project progress.

3.0 WORK BREAKDOWN STRUCTURE

Task I. Big Pine Key Project Area 10

A. Site Improvements

1. In addition to the construction of new stormwater drainage structures and the repair of existing structure, grading and landscaping will be performed. The COUNTY or its subcontractors will make site improvements in accordance with standard engineering practices under the direction of the County Engineer.

B. Site Inspection

1. At times agreeable to the DISTRICT and the COUNTY (County Engineer), site inspections of the project will be made to allow the DISTRICT to verify that the project is proceeding.

C. Project Deliverables

1. The COUNTY will provide quarterly updates on project progress. These updates will include any physical reports and invoices provided to the COUNTY by its subcontractors on the project.

D. Project Cost

1. The Project cost, upon certification by the County Engineer and DISTRICT that the project is complete according to engineering plans, will be a lump sum amount of \$400,000, of which the DISTRICT will fund \$200,000.

E. Project Revisions

1. Based on constraints that may come up during project completion, revision may be made to the stormwater components. Said revisions must be approved by the DISTRICT and be in general accord with the purpose of the stormwater components of the project, to eliminate a direct stormwater discharge to Outstanding Florida Waters.

EXHIBIT "B"

PAYMENT AND DELIVERABLE SCHEDULE

Task No.	Task Description	Deliverable	Due Date	Project Cost	SFWMD Not-to-Exceed
I	Big Pine Key Project 10	Progress Report	9/1/06	\$400,000	\$200,000
Total				\$400,000	\$200,000

Cut off ↗

EXHIBIT C

FUNDS AWARDED TO THE ENTITY PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
			NOT APPLICABLE		

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
			NOT APPLICABLE		

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:					
State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title Or Funding Source Description	State Appropriation Category
				NOT APPLICABLE	
Total Award					

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<http://12.46.245.173/cfda/cfda.html>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<http://state.fl.us/fsaa/catalog>]. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the recipient is clearly indicated in the Contract.